

EXHIBIT 1

**REDACTED VERSION OF
DOCUMENT TO BE
SEALED**

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN

3 IN RE:

4 FLAGSTAR DECEMBER 2021 DATA) Case No.
5 SECURITY INCIDENT LITIGATION,) 4:22-cv-11385
6 _____
7

8 The videotaped deposition of JENNIFER
9 CHARTERS, called by the Plaintiffs for examination,
10 pursuant to notice and pursuant to the Federal Rules
11 of Civil Procedure for the United States District
12 Courts pertaining to the taking of depositions, taken
13 before Michelle A. Duzan, Certified Shorthand
14 Reporter and Registered Merit Reporter, at Skadden,
15 Arps, Slate, Meagher & Flom, LLP, 155 North Wacker
16 Drive, 28th Floor, Chicago, Illinois, commencing at
17 the hour of 10:37 a.m. on the 9th day of January,
18 A.D., 2024.

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1 A P P E A R A N C E S:

2

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COMPLEX LITIGATION GROUP, BY
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AND

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11

On behalf of the Plaintiffs;

12

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP, By
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17

On behalf of the Defendant.

18

ALSO PRESENT:

19

Ms. Jennifer Stout, Esq., Flagstar

20

Ms. Amanda Yonushatis, videographer

22

* * * *

23

24

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1 THE VIDEOGRAPHER: We are now on the record
2 in the matter of Flagstar December 2021 Data Security
3 Incident Litigation in the United States District
4 Court, Eastern District of Michigan, Case Number
5 4:22-cv-11385. Today's date is January 9th, 2024,
6 and the time is now 10:38 a.m.

7 This is the videorecorded deposition of
8 Jennifer Charters. We are located at 155 North
9 Wacker Drive in Chicago, Illinois. My name is Amanda
10 Yonushatis, and the court reporter is Michelle Duzan.

11 For the record, would counsel please
12 introduce themselves and who they represent?

13 MR. BARTHLE: Patrick Barthle, Morgan &
14 Morgan, on behalf of the plaintiffs.

15 MS. KANE: Jordan Kane from Stueve, Siegel,
16 Hanson on behalf of the plaintiffs.

17 MS. LAPE: Marcie Lape from Skadden Arps on
18 behalf of defendant.

19 MS. SIELING: Lindsey Sieling from Skadden
20 Arps on behalf of the defendant.

21 MS. STOUT: My name is Jennifer Stout. I'm
22 with the Flagstar Bank as in-house counsel.

23 (Reporter clarification.)

24 MS. STOUT: Jennifer Stout. I'm with

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1 Flagstar Bank as in-house counsel.

2 THE VIDEOGRAPHER: The court reporter will
3 now swear in the witness.

4 (Witness duly sworn.)

5 JENNIFER CHARTERS,

6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BARTHLE:

10 Q. Ms. Charters, thank you for being here. My
11 first question is, can you state your full name for
12 the record?

13 A. Jennifer Charters.

14 Q. And are you familiar with the Stipulated
15 Protective Order in this case?

16 A. No.

17 Q. Do you know whether you've signed the
18 acknowledgment so that we can show you confidential
19 documents? I mean, they're Flagstar's documents
20 but...

21 A. I guess I'm not sure what document you're
22 referring to. I signed a declaration, but I am not
23 aware of signing another document, but...

24 MR. BARTHLE: We'll just mark this as 17.

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1 (Whereupon, Deposition

2 Exhibit No. 17 was marked.)

3 MR. BARTHLE: All right. I only brought one
4 because I assume you'll have it but...

5 BY MR. BARTHLE:

6 Q. Have you ever seen that document before?

7 A. No, I do not believe I've ever seen this
8 document before.

9 Q. This is -- it's called a Stipulated
10 Protective Order. It governs the documents that are
11 produced in this case and who we can show them to and
12 how we can show them. And pursuant to those
13 provisions, certain documents, for me to be able to
14 show them to you, you have to agree to be bound by
15 this. The last page, maybe two pages is an agreement
16 where you can sign that.

17 MS. LAPE: I don't have the protective order
18 memorized. Are you planning to show her documents
19 produced just by Flagstar?

20 MR. BARTHLE: Yes, but I believe even for
21 parties, they have to sign the acknowledgement,
22 parties as defined as employees and all that.

23 MS. SIELING: I think the --

24 THE WITNESS: Sorry if I'm taking a long

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1 time. I just want to know what I'm signing.

2 All right. Does someone have a pen I could
3 use? Thank you.

4 (Witness signs exhibit.)

5 Today is the 9th?

6 BY MR. BARTHLE:

7 Q. Yes, ma'am.

8 A. Thank you.

9 Q. Thank you.

10 A. And who does this go to?

11 Q. All right. Have you ever been deposed
12 before?

13 A. No.

14 Q. All right. I'm going to go over some rules
15 of the road then. The first thing is you can see we
16 have a court reporter here writing down everything
17 that we say, so it's important that your answers are
18 verbal. So if you just shake your head or say huh-uh
19 or uh-huh, that doesn't make for a very good record.
20 So clear yes, no, or explanations. Is that -- is
21 that okay?

22 A. That is fine.

23 Q. Similarly, it's important that you wait
24 until I'm finished asking the question before you

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1 start your response because she can't write down what
2 we're both saying at the same time. And similarly, I
3 will try to wait until you're finished answering
4 before I start the next question. Is that okay?

5 A. Understood, yes.

6 Q. You understand that your testimony could be
7 for trial and played before a judge or a jury?

8 A. Yes.

9 Q. You understand that you've taken an oath to
10 provide truthful testimony just as if you were
11 testifying in court?

12 A. Yes.

13 Q. If I ask you a question that you don't
14 understand, feel free to ask me to rephrase. If you
15 answer, I'm going to assume that you understood the
16 question. Okay?

17 A. Uh-huh. Yes.

18 Q. If you need a break, let me know. We
19 usually take a break about every hour. The only sort
20 of caveat to that is I ask that we not take a break
21 while a question is pending. So just ask your
22 question, answer it, and then we can take a break.
23 All right?

24 A. Okay.

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1 Q. Do you have any health conditions or are you
2 on any medication that might affect your ability to
3 testify today?

4 A. No.

5 Q. Anything else that would prevent you from
6 testifying completely and accurately today?

7 A. No.

8 Q. When I refer to Flagstar today, is it your
9 understanding or can we agree that that relates to
10 both defendants New York Community Bancorp, Inc. and
11 Flagstar Bank, N.A.?

12 A. Yes, though I think it's important to
13 recognize the time period in which you may be
14 referencing those. The merger between the two
15 companies occurred January -- or sorry, December 1st
16 of 2022 -- 2020- -- what's -- 2022. So it's just
17 been over a year that we've been a combined entity.

18 Q. What's your home address?

19 A. 753 Grace Street in Northville, Michigan.

20 Q. And you're familiar with the -- the cyber
21 incident that Flagstar experienced on or around
22 December 3rd to 4th, 2021?

23 A. Yes.

24 Q. Is it okay today if we refer to that either

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1 as "the incident" or "the breach" or "the data
2 breach"?

3 A. Yes.

4 Q. All right. You'll understand that that's
5 what I'm referring to?

6 A. Yes.

7 Q. I'll show you what we'll mark as Exhibit 18.

8 (Whereupon, Deposition

10 BY MR. BARTHLE:

11 Q. Have you ever seen that document before?

12 A. Yes, I have.

13 Q. And this is the notice of your deposition
14 for today, correct?

15 A. That is correct.

16 Q. What did you do to prepare for your
17 deposition today?

18 A. I met with my attorneys yesterday, and we
19 did a quick briefing of what it would be like to be
20 deposed, and I reviewed some of the documents that
21 were related to the matter. And that's about it.

22 Q. Do you recall what documents you reviewed?

23 MS. LAPE: Objection. I'm going to instruct
24 you not to answer that question. It calls for

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1 work -- attorney work product.

2 You can ask her if she recalls any
3 documents -- if she reviewed any documents that
4 refreshed her recollection. That would be a proper
5 question.

6 BY MR. BARTHLE:

7 **Q. Okay. Did you review any documents that**
8 refreshed your recollection?

9 A. I did.

10 **Q. And what were those?**

11 A. I reviewed the declaration. I believe that
12 was from July that that was signed, so it's been
13 quite some time. I reviewed -- there was a document
14 that described part of the incident, so I reviewed
15 that. I looked back at some of the interaction with
16 the threat actor. I did look at the ransom -- or I
17 guess basically a ransom note that they essentially
18 sent to us. I did look at some of the data
19 associated with the individuals impacted. And I
20 believe that -- that covers it.

21 **Q. You mentioned a document that described the**
22 incident. What form was that in? Was it a report or
23 an e-mail, or what was the form of this document?

24 A. I believe it was a Word document, but it was

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1 a printed copy, so I did not have an electronic
2 version to know if -- what the format was.

3 Q. And was this something that Flagstar
4 created?

5 A. Yes.

6 Q. Do you know who at Flagstar would have made
7 this?

8 A. I don't know.

9 Q. Do you know when it was created?

10 A. I do not know.

11 Q. Next you mentioned the interaction with the
12 threat actor. What -- what form was that in?

13 A. It was a paper form, but it was of e-mail
14 exchanged.

15 Q. Was it -- did it consist of a Gmail e-mail
16 exchange?

17 A. It did.

18 Q. The ransom note, was that a paper copy as
19 well?

20 A. It was.

21 Q. Do you know what that paper copy originally
22 derived from?

23 A. It was a fax.

24 Q. And then the data associated with the

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1 **impacted individuals, what -- what form was that in?**

2 A. It was -- what I looked at was paper, but it
3 was from an Excel document.

4 Q. **I think we'll probably get to that piece**
5 **later. But was that something that Flagstar created?**

6 A. Yes.

7 Q. **Were you involved in its creation?**

8 A. I was not involved in its creation.

9 Q. **Do you know when it was made?**

10 A. It was made likely around March of 2021.

11 Q. **Other than conversations with your lawyers,**
12 **did you meet with anyone in preparation for your**
13 **depo?**

14 A. No.

15 Q. **Did you bring any notes or documents with**
16 **you today?**

17 A. No.

18 Q. **Did you review any other deposition**
19 **transcripts from this case?**

20 A. No.

21 Q. All right. I'm going to hand you what we'll
22 mark as Exhibit 19.

23

24

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1 (Whereupon, Deposition

2 Exhibit No. 19 was marked.)

3 BY MR. BARTHLE:

4 Q. Are you familiar with this document?

5 A. Yes, I am.

6 Q. And what is it?

7 A. It is a declaration that I signed in regard
8 to this matter.

9 Q. Are you aware it was submitted in connection
10 with Flagstar's Motion to Dismiss that was filed in
11 this case?

12 A. Yes, I am aware.

13 Q. And does this appear to be a true and
14 accurate copy of the declaration that you submitted?

15 A. It appears to be accurate, yes.

16 Q. Have you submitted declarations in a legal
17 proceeding before?

18 A. No.

19 Q. Can you tell me who drafted what's now
20 marked as Exhibit 19?

21 A. I don't know who drafted it. I know that it
22 was provided to me by my legal counsel.

23 Q. So you didn't prepare this yourself?

24 A. I did not.

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1 Q. Do you know when preparation of this
2 declaration began?

3 A. I do not.

4 Q. Do you know whether whoever prepared this
5 spoke with anyone inside of Flagstar about its
6 content?

7 A. I do not know. I would have to speculate
8 because the information that is contained within it
9 is information from Flagstar.

10 Q. Do you know whether whoever prepared this
11 declaration would have spoken with folks outside of
12 Flagstar?

13 A. I do not know.

14 Q. So understanding that it was prepared by
15 someone else and it -- it came to you, was there any
16 sort of iterations or revisions that took place?

17 A. No. Not after I saw it, anyway.

18 Q. So it came to you as just a complete whole
19 and -- and you reviewed and signed it?

20 A. Yes.

21 Q. So there were -- at least from your
22 perspective, there weren't any prior drafts that you
23 reviewed?

24 A. No.

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1 Q. I guess in -- in connection with executing
2 this declaration, did you review or consider any
3 documents?

4 A. Yes.

5 Q. And what were those?

6 A. The data related to the individuals who were
7 identified to confirm that indeed, you know, the
8 statements that were in the declaration were true.

9 Q. I'm going to show you what we'll mark as
10 Exhibit 20.

11 (Whereupon, Deposition

13 BY MR. BARTHLE:

14 Q. And I apologize for the minuscule size, but
15 that is how it came to us.

16 MS. LAPE: This doesn't have -- it doesn't
17 appear to have a Bates stamp on it.

18 MR. BARTHLE: My understanding, when we
19 printed it, this is how it printed.

20 MS. LAPE: Do you know what Bates stamp is
21 associated with this document?

22 MS. KANE: (Nodding.)

23 MR. BARTHLE: It should be FLAG-DEC-00000087
24 to 88.

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1 BY MR. BARTHLE:

2 Q. Are you familiar with this document?

3 A. Yes.

4 Q. And was this what you just testified to
5 having reviewed in connection with executing the
6 declaration?

7 A. Yes.

8 Q. And this was the only documents that you
9 reviewed in connection with preparation, execution of
10 the declaration?

11 A. Yes.

12 Q. What is this Exhibit 20?

13 A. It is an excerpt of the data that was
14 provided by the Flagstar team in connection with
15 individual data impacted, exfiltrated by a threat
16 actor.

17 Q. And -- and you said it's an excerpt of data
18 provided by the Flagstar team. Who's the Flagstar
19 team?

20 A. The Flagstar data analytics group in fact
21 produced this based off of information that they had
22 from our data forensics provider, and so we added
23 additional data to the file so that we could make
24 contact with individuals who were on that list.

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1 **Q.** All right. Who in the -- is in the Flagstar
2 data analytics team that prepared this document?

3 A. One of the individuals, the primary
4 individual was Kamala S, I'm going to say,
5 Srigiriraju. We can get the accurate pronunciation
6 and spelling of that last name for you. But Kamala
7 is one of our data architects within the Flagstar IT
8 organization and was a primary in terms of producing
9 this. Another individual who was involved is Jeremy
10 Feen. That's F E E N. And overseeing all of it is
11 Greg Hubble who is our chief data officer within IT.

12 **Q.** Do you know how this document, these two
13 pages, were created?

14 A. We have a data warehouse that has all of our
15 customer data contained within it, and we mapped key
16 elements that we had against our data warehouse to
17 produce things like address so that we could send a
18 mailing to the individuals with credit monitoring.

19 **Q.** And -- and how did you become informed about
20 how this document was created?

21 MS. LAPE: Patrick, just so we're clear, you
22 know, we represented to you and we produced this
23 document that this was an excerpt of the data that
24 represented the plaintiffs involved in this case.

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1 And so I think there's a little confusion here with
2 respect to the questions about whether you're talking
3 about the full list of people who were -- who were
4 subject to the breach or whether you're just talking
5 about this specific excerpt that was created for this
6 litigation. So maybe we can just clarify that in the
7 questions.

8 MR. BARTHLE: Sure.

9 BY MR. BARTHLE:

10 Q. Yeah. I'm talking about the -- the --
11 whatever source this was drawn from. Okay?

12 A. Uh-huh, the master list.

13 Q. Right.

14 A. Yeah.

15 Q. So it's my understanding that the data
16 analytics team, using the data warehouse, matched
17 certain -- well, let me ask. Let me strike that.

18 You mentioned a data forensic vendor earlier
19 in your answer. Do you recall that?

20 A. Yes, I do.

21 Q. Who was that?

22 A. Kroll

Q. What do they do?

²⁴ A. Kroll as a data forensics provider received

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1 the data that was breached, and they go through and
2 identify, either automatically or manually, what PII
3 data, personally identifiable information, may be
4 contained within a file. We give them some
5 information around, what does an account number, for
6 example, look like? And they match against it where
7 they can.

8 **Q. And how is it determined what the breached**
9 **data was that Kroll received?**

10 A. We were able to pull the data out of our
11 environment. We had logs from our servers that
12 contained which files were extracted, and we were
13 able to identify those files and send them to Kroll.

14 **Q. Who was involved in that analysis of the --**
15 **of the logs?**

16 A. I don't know all the people who were
17 involved, but it was predominantly our information
18 security team.

19 **Q. You weren't involved personally in that**
20 **process?**

21 A. I was not.

22 **Q. If you're trying to determine who would have**
23 **been involved in that process, who would you go to**
24 **first?**

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1 A. I would have gone to the CISO who at the
2 time was responsible for overseeing the information
3 security team.

4 Q. **And who was that?**

5 A. Zah Gonzalvo.

6 Q. **Is he still employed by Flagstar?**

7 A. She is no longer employed by Flagstar.

8 Q. **Who's the CISO today?**

9 A. John Gambardella.

10 Q. All right. So let's see if I understand how
11 this -- well, the -- the list from which this
12 document was drawn was created. Kroll got the --
13 sort of the universe of breached data. They
14 determined the individuals associated with it?

15 A. They looked at the data to try to identify
16 any individuals who were impacted with the PII or the
17 personally identifiable information key fields.

18 Q. **And then at some point the Flagstar data**
19 **analytics team gets involved, correct?**

20 A. Correct.

21 Q. **And what -- what -- what are they doing with**
22 **respect to this --**

23 A. Yeah.

24 Q. **-- list?**

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1 A. So Kroll had to first produce for us a list
2 of impacted individuals, including the elements that
3 were impacted. Then our team took that list and
4 mapped it against our data warehouse to identify
5 addresses, confirm that they were individuals who
6 were part of our -- our data warehouse. It's
7 possible someone may not have been within the data
8 warehouse at all. And then we would identify
9 addresses.

10 Q. So Kroll got the universe of breached data
11 and identified the PII within it, figured out who the
12 individuals were with -- with impacted PII and what
13 the data elements for those individuals were,
14 correct?

15 A. I'm sorry. Can you repeat it? I just want
16 to make sure I'm answering the right question.

17 Q. So Kroll got the universe of -- of --

18 A. Yeah.

19 Q. -- breached data, right?

20 A. Yep.

21 Q. Then they identified PII elements within it,
22 correct?

23 A. Correct.

24 Q. Then they figured out what individuals that

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1 PII related to?

2 A. Correct.

3 Q. And they figured out what all data
4 elements -- PII data elements were in that universe
5 of data for those individuals?

6 A. Correct.

7 Q. Then that list of -- of impacted individuals
8 then goes to the Flagstar data analytics team, right?

9 A. Correct.

10 Q. And the -- and the data analytics team then
11 runs it through the data warehouse to find addresses
12 essentially?

13 A. Correct.

14 Q. And the team that determined the scope of
15 the -- of the breached data was the information --
16 Flagstar's information security team, right?

17 A. The scope of the breached data meaning the
18 data that left the environment that the threat actor
19 may have had access to, correct.

20 Q. Correct.

21 A. Yes.

22 Q. Are you familiar with -- with what each of
23 these columns mean?

24 A. I am familiar with most of the columns, yes.

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1 Q. So on -- in the first page here of
2 Exhibit 20, the far left column, Unique ID, is -- is
3 that a Flagstar identifier or what is that?

4 A. That is probably one column I am not a
5 hundred percent sure of, and I'm having a hard time
6 reading it on this form. I'm sorry.

7 Q. Yeah. And then on the -- on the second
8 page, there's a similar column, Unique ID, but it
9 references a Phase 1 and a Phase 2. Do you have any
10 idea what that is?

11 A. It was -- we received some of the data in --
12 I guess I'll say groups, so batches. That's likely
13 what that is related to, but I'm somewhat speculating
14 on that.

15 Q. All right. On the -- on the first page, the
16 third column from the left, it says AGG exposed
17 elements. Do you see that?

18 A. I'm sorry. Which page --

19 Q. I'm sorry.

20 A. -- am I looking at?

21 Q. First page of Exhibit 20.

22 A. Okay.

23 Q. The third column from the right.

24 A. Third column -- okay, from the right.

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1 Q. Yeah. I messed that up.

2 It says AGG_exposed_elements. Do you see
3 that?

4 A. Yes.

5 Q. What is that referring to?

6 A. Those are the -- the -- you know, as I
7 referenced, PII elements that were potentially
8 exposed. They were part of the exfiltrated data.

9 Q. And that's in the December of 2021 related
10 incident, correct?

11 A. Correct. I'm trying to recall -- I -- I
12 don't recall which list -- I don't have the dates on
13 here or I don't see dates on here as to whether this
14 was December 2021. It does not specifically say
15 here.

16 MS. LAPE: So I -- I can represent that the
17 document that's Bates-stamped ending in 87 relates to
18 the December 2021 breach. And the next page which
19 ends in Bates stamp 88 relates to the Accellion
20 breach.

21 THE WITNESS: Thank you.

22 BY MR. BARTHLE:

23 Q. So that process we just described about how
24 this list was created would apply to the -- to the

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1 **first page of Exhibit 20, correct?**

2 A. Correct.

3 Q. Can you explain to me how the list on the
4 **second page of Exhibit 20, which counsel just**
5 **represented relates to the Accellion breach, how was**
6 **it created?**

7 A. It was much the same process. So we had the
8 data forensics provider look through the data,
9 identify any particular data elements of -- that were
10 important PII type data and then that was sent back
11 to the data warehouse team who went through
12 essentially the same process.

13 Q. And for -- in both instances -- well,
14 **scratch that.**

15 For purposes of the -- of the December 2021
16 breach list, the first page of Exhibit 20, it's true
17 you weren't personally involved in the sort of log
18 analysis to determine the breached information or
19 potentially breached information, correct?

20 A. That is correct.

21 Q. And you weren't personally involved in
22 Kroll's analysis to determine the -- the individuals
23 and the -- and the information that was impacted for
24 those individuals?

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1 A. That's correct.

2 Q. And you also weren't involved in the
3 Flagstar data analytics team's data warehouse
4 process, correct?

5 A. Correct.

6 Q. All right. Other than these two pages --
7 well, scratch that.

8 Other than the two lists as we've discussed
9 them, was there anything else that you reviewed or
10 considered at the time you were preparing, executing
11 your declaration?

12 A. I used my recollection of the events that I
13 participated in related to the incident that was
14 described.

15 Q. All right. If you go back to Exhibit 19,
16 your declaration, at paragraph 13, the last
17 paragraph, you declare under penalty of perjury that
18 everything in it is true and correct. Do you see
19 that?

20 A. I do.

21 Q. Does that remain the case today?

22 A. Yes.

23 Q. Is there anything in here you need to amend
24 or change?

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1 A. No.

2 Q. To the extent you had any questions when you
3 reviewed this declaration -- well, let me back up.

4 Was there anything in the declaration that
5 you had questions about before you executed it?

6 A. I wanted to make sure that the names
7 represented names that were in our file.

8 Q. And how did you go about ensuring the
9 accuracy of those?

10 A. Looking at the master data record.

11 Q. And there was nothing else that you needed
12 to check on or -- or confirm?

13 A. I don't recall there being anything else.
14 Most of what I see in here is very straightforward
15 and what I recall from the incident.

16 Q. All right. I want to direct your attention
17 to paragraphs 3 and 4 of the declaration, which is
18 Exhibit 19.

19 Paragraph 3 states, On December 3 and 4,
20 2021, Flagstar experienced a cyber incident involving
21 unauthorized access to its network by a threat actor.
22 During that time, the threat actor exfiltrated
23 certain data from Flagstar's network, the cyber
24 incident.

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1 **Did I read that correctly?**

2 A. Yes, you did.

3 Q. Does that -- that timeline, does that remain
4 your understanding of what happened in this case?

5 A. On December 3rd and 4th, we had data
6 exfiltrated from the Flagstar environment, correct.

7 Q. Do you know whether the incident started
8 prior to December 3rd?

9 A. It did.

10 Q. And -- and when did it start?

11 A. I don't recall the exact date, but it was in
12 November, late November.

13 Q. November 22nd, 2021, does that sound about
14 right?

15 A. That sounds about right.

16 Q. Do you know whether the attacks related to
17 this incident persisted after December 4th?

18 A. They did.

19 Q. And -- and what were those attacks that
20 occurred after?

21 A. There were, for example, DDOS attacks that
22 continued beyond December 3rd and 4th. There was
23 ransomware that was deployed on December 13th.

24 Q. So in paragraph 3 when -- when you

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1 referenced December 3rd and 4th, that's just
2 referencing when actual exfiltration occurred?

3 A. That is correct.

4 Q. And what is the -- the basis for your
5 understanding that those are the -- the two days
6 where it occurred?

7 A. We had a -- I'll say a postmortem after the
8 event, and we went through and reviewed all of the
9 various -- I guess I'll say highlights of the event,
10 and this was specifically where the logs show that
11 data was exfiltrated out of the environment.

12 Q. And that log analysis, was -- was that the
13 same log analysis that was done related to the --
14 Exhibit 20 by the information security team?

15 A. That is correct. I want to just clarify.
16 We had assistance from external vendor Kroll as well
17 who did forensics analysis of our environment, so
18 that was led by our information security team with
19 participation and also support from Kroll.

20 Q. All right. So you testified that your
21 understanding about exfiltration occurring on
22 December 3rd and 4th was from a postmortem after this
23 analysis. What was the form of that postmortem?

24 A. Can you elaborate what you mean by "form"?

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1 **Q.** Is there a report? Was it a meeting, an
2 e-mail? How did you come to understand that it was
3 only December 3rd and 4th?

4 **A.** There was a report that was produced. Kroll
5 did their forensics analysis. And there were also
6 meetings where we discussed what occurred.

7 MS. LAPE: And I'm going to caution you that
8 to the extent these meetings involved legal counsel,
9 I want to make sure that you don't disclose anything
10 that's protected by the attorney-client privilege.
11 So just keep that in mind as he's ans- -- asking
12 these questions, please.

13 THE WITNESS: Okay.

14 BY MR. BARTHLE:

15 **Q.** That report from Kroll, it was a written
16 report?

17 **A.** Yes.

18 **Q.** Do you recall approximately when that was
19 received?

20 **A.** I do not recall when it was received, but it
21 was likely sometime January, February, following the
22 event.

23 **Q.** What was your personal role in discovering
24 or responding to this cyber incident?

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1 A. As the chief information officer, I oversee
2 the operations of the IT environment. And if there
3 are incidents that occur, I need to make sure that
4 I'm aware so that we can make sure that our
5 operations can continue.

6 **Q. So, I mean, specifically in this instance, I
7 guess exfiltration happens on the 3rd -- on the 3rd
8 and the 4th. When did you become aware of that?**

9 A. I didn't become aware -- I knew that there
10 was an incident as it was -- shortly after it
11 occurred, once we were aware of what happened. So I
12 was very connected with the information security
13 team, with the CISO, who was essentially on point for
14 working with our forensics vendors, managed detection
15 response vendors, and I can't tell you exactly when I
16 knew the data was exfiltrated but was -- it was very
17 shortly after it occurred.

18 **Q. Did you -- did you have any personal role in
19 the response other than overseeing the folks who were
20 doing it?**

21 A. I was engaged with the IT team to take
22 remediation steps where needed based off of feedback
23 that we were getting from the information security
24 team and Kroll.

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1 **Q.** Are you familiar with who the threat actor
2 was?

3 **A.** Yes.

4 **Q.** And who was it?

5 **A.** Shao, I believe was the name of the group.

6 **Q.** And how did you come to that understanding?

7 **A.** I learned of it through the information
8 security team.

9 **Q.** And that was Zag at that time?

10 **A.** Zah.

11 **Q.** Can you spell that?

12 **A.** Sure. Z A H. Zahira is the full name,
13 Z A H I R A.

14 **Q.** So would you just get reports from Zah about
15 who it was and how it happened and whatnot?

16 **A.** We actually had meetings, regular meetings.
17 So not just a report. We had an incident response
18 plan that we follow. And that involved a number of
19 different executives who were made aware of the
20 incident and our therefor response to it.

21 **Q.** And who was present at these meetings?

22 **A.** I will recall to the best of my ability who
23 was there. So the chief risk officer -- do you want
24 name?

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1 **Q.** **Sure.**

2 A. Okay. That was Steven Figliuolo. Good luck
3 spelling that one. He was there. Our chief
4 information security officer, Zah that I mentioned.
5 We had a crisis management individual who was often
6 involved in these meetings, Laheeb Betti. We had
7 our -- basically the executive team which was made up
8 of Sandro DiNello who was the CEO. We had Lee Smith,
9 president of mortgage. Jim Ciroli, the chief
10 financial officer. Chief HR officer. At the time I
11 believe it was David Hollis. There was a change
12 in -- one individual retired, so I believe it was
13 David who was there. I'm trying to think if I'm
14 missing anyone. Reggie Davis, president of banking.
15 Paul Borja, general counsel. And I believe that
16 covers most of the participants.

17 **Q.** **These are physical meetings or Zoom or both?**

18 A. We were predominantly remote at the time, so
19 this was Webex.

20 **Q.** **And was it the CISO that was reporting**
21 **during these meetings about what was happening?**

22 A. Yes, mostly, yes.

23 **Q.** **Back to your declaration, Exhibit 19,**
24 **paragraph 4, it states that, Following a cyber**

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1 incident, Flagstar received ransom demands from the
2 threat actor.

3 Do you see that?

4 A. I do.

5 Q. Did you personally receive those ransom
6 demands?

7 A. I did not.

8 Q. Okay. How were they received?

9 A. There was a fax that was sent, and the fax
10 was distributed, I believe, somewhat randomly. I
11 also understand that Sandro DiNello, CEO of the bank
12 at the time, received an e-mail.

13 Q. So at least as far as you're aware, there
14 was a sort of broadly distributed fax and then an
15 e-mail to the CEO; is that correct?

16 A. Correct.

17 Q. I'll show you what we'll mark as -- as
18 Exhibit 21.

19 (Whereupon, Deposition

Exhibit No. 21 was marked.)

21 BY MR. BARTHLE:

22 Q. Have you seen this before?

23 A. I have.

24 Q. What is it?

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1 A. This is the fax that I referenced that we
2 received.

3 Q. And I think earlier when you were
4 referencing the documents that you reviewed prior to
5 the deposition, you referenced the ransom note. Was
6 it this one?

7 A. No.

8 Q. What was the one that you reviewed in
9 preparation for today?

10 A. My apologies. I'm going to go back on that.
11 I was thinking that you said in -- as I put the
12 dep- -- or sorry -- the declaration together. You're
13 asking -- and I just want to make sure I'm clear on
14 this. You're asking what I did to prepare for the
15 deposition?

16 Q. Correct.

17 A. Got it. So yes, I did see this before.

18 Q. And this is -- again, you said there was a
19 fax and there was an e-mail. This is the fax,
20 correct?

21 A. This is the fax, correct.

22 Q. And it went -- do you know who all it went
23 to?

24 A. No. I mean, it went to fax machines in some

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1 cases. Believe it or not, they still exist. And in
2 other cases, I'm sure they probably went to a -- sort
3 of a group fax in more electronic form.

4 **Q. How did you first come to see this?**

5 A. It was sent to -- basically I believe it
6 arrived at the information security teams desk at
7 some point. I don't know how I came across it other
8 than it was likely shared in one of these meetings.
9 So while I did not receive it directly, as part of
10 the crisis management team, this was part of the
11 material that we -- we saw and that we were managing
12 the risk around.

13 **Q. Was there just one version of this fax that
14 just went to a bunch of places, or were there
15 multiple versions?**

16 A. I am only aware of one version.

17 **Q. Have you seen the e-mail to the CEO?**

18 A. Yes, I have.

19 **Q. Is it substantively identical or...**

20 A. No.

21 **Q. How is it different, if you recall?**

22 A. If I recall, it was much briefer. And it
23 was really a true ransom, if I recall, where they
24 were asking for money.

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1 Q. Do you recall what day this was received on?

2 A. I do not.

3 Q. Again, looking at Exhibit 21, ransom fax.

4 It starts, Hello again. Do you see that?

5 A. I do.

6 Q. Any sense of why the attacker said "again"?

7 A. I do not.

8 Q. Do you know whether this group had attacked
9 Flagstar before?

10 A. They have never attacked Flagstar that I am
11 aware of.

12 Q. All right. Turning back to your
13 declaration, paragraph 4 still, the second sentence,
14 you write, After negotiations with the threat actor,
15 which were facilitated by a professional ransomware
16 negotiator, Flagstar and the threat actor agreed that
17 Flagstar would pay 1 million in exchange for, among
18 other things, the complete deletion of all data
19 acquired by the threat actor from Flagstar's network.

20 Do you see that?

21 A. I do.

22 Q. Did I read that correctly?

23 A. You did.

24 Q. Who was the professional ransomware

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1 **negotiator referred to here?**

2 A. The firm we used was Tetra Defense.

3 Q. **Were you involved in the decision to use**
4 **Tetra?**

5 A. No.

6 Q. **Why not?**

7 A. That was not part of my authority to make
8 that decision.

9 Q. **Who was involved in the decision?**

10 A. The -- we worked with our insurance provider
11 who had provided us a breach coach who helps with
12 kind of the management of a breach overall, and they,
13 I believe, have used Tetra Defense in the past and
14 recommended them as a negotiator, not a vendor that
15 we typically have on hand.

16 Q. **Who from Flagstar would have been involved**
17 **in -- in agreeing to use Tetra?**

18 A. It was likely the -- I guess I'll say the
19 legal team who was responsible for coordinating our
20 insurance.

21 Q. **Okay. And given that you weren't directly**
22 **involved in this, how did you become aware about**
23 **Tetra's involvement in the negotiation?**

24 A. I mentioned the meetings that we had. We

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1 met almost daily and followed the -- the progress of
2 the various events, the negotiations, and so forth.

3 Q. Do you -- do you recall who would have been
4 reporting on that piece of the -- of the response?

5 A. I believe that it was our breach counsel.

6 Q. Do you know why Flagstar decided to use just
7 a third party generally for the negotiation?

8 A. Yes. It is not our expertise.

9 Q. I think you testified to this earlier, but
10 the reason Tetra was used was they were recommended
11 by the breach coach?

12 A. And insurance provider.

13 Q. Did you have any personal involvement in the
14 discussions between Tetra and the threat actor?

15 A. No.

16 Q. Why not?

17 A. Repeat the question. Why didn't I have
18 involvement in the discussions between Tetra and the
19 threat actor?

20 Q. Correct.

21 MS. LAPE: Objection, vague.

22 You can --

23 Calls for speculation.

24 You can answer the question if you're able

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1 to.

2 THE WITNESS: It wasn't my expertise to
3 contribute to that conversation. I just was not
4 involved in it. It was not my role.

5 BY MR. BARTHLE:

6 Q. And again -- well, let me back up.

7 Given you weren't involved because it wasn't
8 your sort of bailiwick, how did you become informed
9 about what happened in those negotiations, through
10 the executive meetings?

11 A. Correct.

12 Q. Do you know who -- what like individual or
13 individuals at Tetra was responsible for the
14 negotiations with the threat actor?

15 A. I do not.

16 Q. Do you know what form those negotiations
17 took?

18 A. The form was e-mail.

19 Q. Exclusively e-mail?

20 A. I am aware of e-mail. There -- in the
21 e-mails, there is mention of a call. I am not aware
22 of whether there was actual discussion or not.

23 MR. BARTHLE: We're right at an hour. Do
24 you want to take a break, or do you want to keep

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1 going?

2 MS. LAPE: Take a quick five-minute break?

3 MR. BARTHLE: Sure.

4 THE WITNESS: Sure. That's fine.

5 THE VIDEOGRAPHER: We are going off the
6 record at 11:38 a.m.

7 (Whereupon, a break was taken,
8 after which the following
9 proceedings were had:)

10 THE VIDEOGRAPHER: We are going back on the
11 record at 11:50 a.m.

12 BY MR. BARTHLE:

13 Q. Ms. Charters, earlier in your testimony, you
14 referenced a managed detection response vendor. Do
15 you recall that?

16 A. I do.

17 Q. Who was that?

18 A. Kroll.

19 Q. Were there any other -- you've referenced
20 Kroll and Tetra. Were there any other vendors
21 involved in this incident?

22 A. We did -- during remediation, we did look at
23 the vendors who were involved in the various systems,
24 so, for example, Citrix. We engaged them to help

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1 with any kind of remediation. But during the actual
2 incident itself, it was somewhat limited. There was
3 a -- another firm that was involved. I believe they
4 were FTI, but that was more for helping us with
5 communications.

6 **Q. Communications with whom?**

7 A. With customers, with -- predominantly it was
8 with customers, but also there were some internal
9 talking points as well. So if you were a customer
10 call center agent who was interfacing with a customer
11 and the customer is asking, you know, what's going
12 on, they provided, you know, FAQs and other things
13 to -- to help them.

14 **Q. You also referenced a breach coach. Do you
15 recall that?**

16 A. I do.

17 **Q. Who was that?**

18 A. McDonald Hopkins was the -- the firm.

19 **Q. Was McDonald Hopkins also the breach counsel
20 you referred to?**

21 A. They were.

22 **Q. So was the coach somebody specific at
23 McDonald Hopkins or just the firm generally?**

24 A. It was a specific individual. I remember

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1 the first name is Jim. I cannot remember the last
2 name at the moment.

3 Q. The ransom note fax, Exhibit 21, was this
4 exchanged during these incident response meetings,
5 the physical demand?

6 A. We did see copies of this -- I -- I'm trying
7 to recall if there was any demand in this one. I
8 don't believe that the demand was here so much as
9 what they were telling us to do or not do.

10 Q. Were other materials exchanged during those
11 meetings?

12 A. There were various materials that were
13 exchanged during the meeting.

14 Q. And -- and what were those?

15 A. I will not be able to recall all materials
16 that were potentially exchanged.

17 MS. LAPE: And I'm just going to caution you
18 briefly. I know you mentioned earlier that the
19 general counsel was present in these meetings. I
20 don't know whether McDonald Hopkins was also present,
21 but we -- I just want you to be cautious to not
22 reveal anything that's protected by the
23 attorney-client privilege as you're answering these
24 questions.

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1 THE WITNESS: Okay.

2 I mean, the predominant purpose behind the
3 meetings was to discuss the events as well as impact
4 to the business and customers and to make sure that
5 we were addressing things, for example, with our
6 regulators, with our board of directors, and anyone
7 else that we needed to notify, which may have
8 included law enforcement.

9 And so when I talk about, you know, what
10 materials, certainly we had the ransom note. We had
11 information around -- from the cyber team, from the
12 information security team. Those are the main things
13 that I recall.

14 BY MR. BARTHLE:

15 Q. Okay. Before the break, we were talking
16 about the negotiations with the threat actor. Do you
17 recall that?

18 A. I do.

19 Q. I believe you testified that they were
20 primarily, perhaps exclusively, by e-mail; is that
21 right?

22 A. That's right. I -- I did mention
23 predominantly e-mail.

24 Q. All right. I'm going to show you what was

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1 **previously marked as Exhibit 12.**

2 MS. LAPE: Thank you.

3 BY MR. BARTHLE:

4 Q. **Have you seen this before?**

5 A. I have.

6 Q. **And what is it?**

7 A. This is an exchange of e-mails between Tetra
8 Defense and the threat actor.

9 Q. **And I think you testified earlier, but you**
10 **had no involvement in these communications, direct**
11 **personal involvement, correct?**

12 A. Correct.

13 Q. **Have you reviewed these before?**

14 A. I have.

15 Q. **When?**

16 A. In preparation for today. I also saw
17 excerpts of them that were sent to us throughout the
18 incident.

19 Q. **Did you review these prior to executing your**
20 **declaration?**

21 A. No.

22 Q. **Well, I want to ask if this appears to be a**
23 **true and correct copy, but I don't think you would**
24 **know, right?**

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1 A. I think that's accurate. Fully compiled, I
2 would not know.

3 Q. All right. I -- I do want to point you to
4 one thing. The very first e-mail here, it's dated
5 December 13th, 2021. Do you see that?

6 A. Uh-huh. I do.

7 Q. It says, Hello, we received e-mails and
8 calls from you. Our e-mail is down right now, so we
9 can't reply. I made this e-mail to talk to you.
10 What do you want from us?

11 Do you see that?

12 A. I do.

13 Q. Did I read that correctly?

14 A. You did.

15 Q. Was Flagstar's e-mail down on December 13th,
16 2021?

17 A. Not all e-mail was down. There were some
18 individuals within the bank whose e-mail was down.

19 Q. And what was the cause of that?

20 A. It was the ransomware and the encryption
21 deployed.

22 Q. And this is nine, ten days after the
23 exfiltration on December 3rd and 4th, correct?

24 A. That is correct.

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1 **Q.** The ransomware was deployed when?

2 A. December 13th.

3 MS. LAPE: And, Patrick, I just want to note
4 that there are not facts in her declaration that talk
5 about the ransomware deployment, and so I do believe
6 we are exceeding the scope of what we've agreed upon
7 for purposes of this deposition. Some general
8 questions, I've -- I've allowed, but I would
9 appreciate if we would stick within the bounds of
10 what we agreed upon on December 5th.

11 MR. BARTHLE: Well, the first we heard that
12 the ransomware was deployed on December 13th was
13 today, and it came from her. So I'm just following
14 up on what she's --

15 MS. LAPE: It did.

16 MR. BARTHLE: -- testified to.

17 MS. LAPE: And as I've said, I've -- I've
18 allowed some general questions, but we're not going
19 to dig deep into facts that aren't presented in the
20 declaration because it does not have to do with the
21 standing argument that's before the Court and it's
22 not within the scope of jurisdictional discovery.

23 BY MR. BARTHLE:

24 **Q.** Was there any e-mail systems down prior to

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1 December 13th?

2 A. No.

3 Q. As far as you're aware, is this first e-mail
4 in Exhibit 12 on December 13th, 2021 the first
5 contact with the threat actor?

6 A. As best I know.

7 Q. And you referenced this earlier, and it says
8 it here, it refers to some calls. Do you know who
9 was receiving calls?

10 A. What I recall is that the threat actor was
11 making attempts to make calls to particularly our
12 CEO, and I guess I would say in somewhat of a
13 harassing way.

14 Q. This refers -- it says, I made this e-mail
15 to talk to you.

16 Do you see that part?

17 A. I do.

18 Q. Do you know who the "I" is who made this
19 e-mail?

20 A. This would have been Tetra Defense.

21 Q. And you're not sure who the actual
22 individual there would have been?

23 A. I do not know.

24 Q. You didn't receive any calls from the threat

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1 actor, correct?

2 A. I did not.

3 Q. And you didn't directly receive the fax, the
4 ransom related fax, Exhibit 21, right?

5 A. Correct.

6 Q. And then the e-mail related sort of ransom
7 demand went just to the CEO as well; is that correct?

8 A. That is my understanding.

9 Q. I'm going to direct you to -- back to your
10 declaration --

11 A. Uh-huh.

12 Q. -- Exhibit 19, paragraph 5, it says, On
13 December 31, 2021, Flagstar paid the threat actor
14 \$1 million in Bitcoin.

15 Do you see that?

16 A. I do.

17 Q. Were you involved in the decision to make
18 that payment?

19 A. I was not.

20 Q. Who was involved?

21 A. The CEO was involved, and he worked with our
22 insurance provider as well as legal counsel in -- and
23 the board of directors in making that decision. To
24 the best of my ability, those are the individuals --

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1 or the groups that I am aware of that he talked to.

2 He obviously would have to tell you if he, you know,
3 got advice or anything from anyone else.

4 **Q. I kind of skipped over this earlier. But
5 your role at Flagstar currently is what?**

6 A. Chief information officer.

7 **Q. And what is your responsibilities in that
8 role?**

9 A. I am responsible for overseeing the IT
10 organization, which includes various groups, whether
11 it be the infrastructure, data center, application
12 development teams, our data team, architecture. We
13 have an IT delivery office that helps deliver
14 projects. And I essentially run the business of IT,
15 which then also includes managing the financials and
16 the people who are involved -- involved in the IT
17 organization. We are responsible for maintaining and
18 running the bank's technology.

19 **Q. And does information security department or
20 division, does that fall within your oversight?**

21 A. Information security does not report to me.

22 **Q. Who do they report to?**

23 A. The chief risk officer.

24 **Q. Given your responsibilities as the chief**

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1 information officer, why were you not involved in the
2 decision to make the ransom payment, if you know?

3 MS. LAPE: Objection, speculation.

4 BY MR. BARTHLE:

5 Q. You can answer.

6 A. I provided input in terms of the operations
7 of the technology. I was able to make statements
8 including -- or provide information in -- in terms of
9 the operational environment, which means systems were
10 up and running. We did not need to get an encryption
11 key from a threat actor which meant that, you know,
12 it was not a requirement to get the systems back up
13 to pay the ransom.

14 Q. How did you become aware that the decision
15 to pay the \$1 million ransom was made?

16 A. It was shared at our meetings.

17 Q. Did you agree with that decision?

18 A. I will tell you that it depends on the
19 situation as to whether or not to pay. I don't
20 think -- it certainly does not help to incent threat
21 actors by paying them money to stop, I guess,
22 harassing you. On the other hand, depending on the
23 situation that anyone is in, they could be in a
24 position where they want to be -- I guess I'll say

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1 they want to protect information and it could be
2 worth the cost to protect that data and information.

3 **Q. Do you know why Flagstar agreed to pay the**
4 **ransom?**

5 A. I don't know all the factors that went into
6 making that decision.

7 **Q. Were you involved in the actual process of**
8 **making the payment?**

9 A. No, I was not.

10 **Q. Who was involved in that?**

11 A. Tetra Defense was involved. I think they
12 have experience in how to set up a Bitcoin wallet,
13 and they also were involved in making sure that we
14 got what we were basically paying for as a result of
15 that payment. I am certain that the CFO needed to be
16 involved in terms of transferring funds. I don't
17 know who else may have been involved.

18 **Q. And would you have become aware of how that**
19 **process occurred through these executive meetings**
20 **you've discussed earlier?**

21 A. Some elements of those details, yes.

22 **Q. How else would you have become aware of --**
23 **of your statement in paragraph 5?**

24 A. The fact that we paid a million dollars in

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1 Bitcoin was shared with the executive team.

2 Q. Do you recall who would have been reporting
3 that in these meetings?

4 A. The CEO would have reported it.

5 Q. Okay. Direct you to paragraph 6 of your
6 declaration, Exhibit 19. It says, The threat actor
7 subsequently provided Flagstar with access via RDP
8 and TeamViewer to the server where their exfiltrated
9 Flagstar data was stored. Do you see that?

10 A. I do.

11 Q. Did I read that correctly?

12 A. You did.

13 Q. What is RDP?

14 A. Remote Desktop Protocol.

15 Q. And -- and what is that?

16 A. It enables a user to be able to get in to
17 another device remotely.

18 Q. And what is TeamViewer?

19 A. TeamViewer is another tool that allows you
20 to see information within another device. So if
21 you're on your PC, you can see into a server.

22 Redacted

[REDACTED]

[REDACTED]

1 Redacted [REDACTED]

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8 Q. Were you personally involved in accessing
9 the, quote, server where the exfiltrated Flagstar
10 data was stored?

11 A. I was not personally involved.

12 Q. And who would have been?

13 A. This would have been -- Tetra Defense was
14 involved in this work.

15 Q. How long after the ransom payment was made
16 was it before Flagstar was provided -- or I guess
17 Tetra was provided access to actually delete the
18 data?

19 A. It was almost immediately. I don't know
20 the -- the exact time frame that it -- that passed.
21 But it was very quickly after the payment was made,
22 we got in there because you -- we did not want time
23 to pass between them receiving the money and us being
24 able to confirm that we got what we paid for.

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1 Q. And almost immediately, are we talking
2 minutes, days?

3 A. I would -- it was almost -- well, it was not
4 days. It would have been minutes, hours.

5 In fact...

6 Q. I'm going to show you what was previously
7 marked as Exhibit 11. I believe this is another part
8 of an exchange with the threat actor over Gmail.

9 Have you ever seen this before?

10 A. Yes, which I would then of course correct on
11 my prior statement. It was days. It was -- it looks
12 like six days later.

13 Q. Right. It appears from this e-mail string,
14 go to Bates page 17, middle of the page, Saturday,
15 January 8th, 4:01 p.m., there's an e-mail from
16 Flagstar Bank 727. It says, We are just waiting for
17 one more erase to finish.

18 Do you see that?

19 A. I do.

20 Q. So does this refresh your recollection that
21 the erasing of the data didn't occur until
22 January 8th, 2022?

23 A. No. I would tell you that looking at this,
24 it appears that on January 10th is when it was

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1 complete.

2 Q. So certainly not minutes or hours after the
3 payment is made, correct?

4 A. Correct.

5 MS. LAPE: Objection.

6 BY MR. BARTHLE:

7 Q. So it's true then that the threat actor had
8 access to the data for ten days after the payment was
9 made?

10 A. It appears so.

11 Q. And you don't know what the threat actor
12 might have done with it during that time, correct?

13 A. I don't know.

14 Q. Was that delay, this ten-ish day delay,
15 disclosed to consumers when the notice of the breach
16 was given?

17 MS. LAPE: Objection.

18 You can answer it if you're able to.

19 THE WITNESS: I don't know why we would have
20 communicated this to consumers.

21 BY MR. BARTHLE:

22 Q. What about to regulators?

23 A. I don't know.

24 Q. Do you know -- I'm assuming it's not really

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1 within your job description. But who, shareholders,
2 board members, who this would or would not have been
3 disclosed to, this delay?

4 MS. LAPE: I'm going to object again.

5 There's nothing about communication in her
6 declaration, and we've agreed that the scope of this
7 will be specific to the facts set forth in the
8 declaration.

9 MR. BARTHLE: Okay. I'll withdraw the
10 question.

11 BY MR. BARTHLE:

12 Q. All right. I want to go back to paragraph
13 6, the second sentence. It says, Flagstar's cyber
14 experts erased the drive on which the Flagstar data
15 was stored and monitored the process until it was
16 complete.

17 Do you see that?

18 A. I do.

19 Q. The Flagstar cyber experts referred to here,
20 is that Tetra?

21 A. That is correct.

22 Q. Anyone else?

23 A. I'm not aware.

24 Q. And I assume you remain unsure of who the

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1 actual individuals were that were involved in that
2 process?

3 A. I don't recall names of the Tetra Defense
4 individuals.

5 Q. Did Tetra Defense conduct any dark web
6 monitoring at this time?

7 A. They did not.

8 Q. And as with the other things we've reviewed,
9 is it correct that you became informed about this
10 process via one of the executive incident response
11 meetings?

12 A. Correct.

13 Q. I think we touched on this earlier. But how
14 does Flagstar know what data was compromised in the
15 incident?

16 A. It is in our logs for the various systems
17 that were impacted.

18 Q. And that review was done by the internal
19 information security team, correct?

20 A. Along with Kroll, who was our forensics
21 team.

22 Q. Prior to the deletion of the servers the
23 threat actor had, was there a comparison between what
24 was on that server and what Flagstar believed had

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1 **been taken?**

2 A. I think what you're asking is, was there a
3 comparison between the log data to what we saw in
4 what Tetra Defense may have seen when they went to
5 delete? Is that what you're asking?

6 Q. **Correct.**

7 A. I don't know.

8 Q. All right. Back to paragraph 6, the last
9 sentence, The threat actor guaranteed that there were
10 no other copies of the data in the possession of
11 anyone outside of Flagstar.

12 **Do you see that?**

13 A. I do.

14 Q. **How was this guarantee communicated?**

15 A. The guarantee is simply based off of the
16 discussion that is in the e-mails and --

17 Q. I'm going to hand you what was previously
18 marked as paragraph -- I mean as Exhibit 13.

19 And I believe between 11, 12, and 13, these
20 are all the communications with the threat actor.

21 And my question is, is it solely from these
22 communications that you believe -- that your
23 understanding that there was a guarantee was made?

24 A. Yes.

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1 Q. Can you show me in these where that
2 guarantee is made?

3 A. I have to review to --

4 Q. Yes, ma'am.

5 A. -- see.

6 Q. Of course.

7 A. Give me a minute.

8 I'm looking for a very specific statement
9 that I recall seeing, and I'm trying to find it.

10 Okay.

11 Redacted



1

Redacted

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12 Q. So that e-mail exchange is the -- the full
13 basis for your statement that, quote, the threat
14 actor guaranteed that there were no other copies of
15 the data in the possession of anyone outside of
16 Flagstar?

17 A. That is correct.

18 Q. It's not based on -- earlier we spoke about
19 there being some sort of calls of some kind, but your
20 understanding isn't related to any calls, just this
21 e-mail exchange, right?

22 A. Correct.

23 Q. Do you know whether the threat actor
24 actually fulfilled all of these agreements, the five

1 points there?

2 A. To the best of our -- of my knowledge,
3 correct. We have not seen the incident posted. We
4 have not seen the data posted. We have not had
5 ongoing conversation with the threat actor. There
6 have been no additional attacks on us or NYCB, and
7 they did provide us some information on getting into
8 the network.

9 Redacted

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 Q. Do you know whether that was the only
17 vulnerability that was exploited by the threat actors
18 in this case?

19 A. It was not.

20 MS. LAPE: Objection. Again, I'd like to
21 caution you to stay within the scope of what we've
22 agreed upon today.

23 BY MR. BARTHLE:

24 Q. It was not?

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1 A. It was not.

2 Q. I want to direct your attention to Exhibit
3 11. It's the last -- it's the bottom of the second
4 to last page and the beginning of the first page.
5 It's Bates 0017 and 0018.

6 Someone from Tetra acting on Flagstar's
7 behalf, is my understanding, says, I thought you
8 telling us how the attack occurred was part of the
9 deal. Was there a vulnerability on one of our
10 external IPs? What backdoors need to be removed?

11 Do you see that?

12 A. I do.

13 Q. Did the threat actor ever respond to that?

14 A. I don't -- I am not aware.

15 Q. Okay. Turning back to your declaration,
16 Exhibit 19, paragraph 7, you wrote, It is my
17 understanding based on Flagstar -- Flagstar's
18 communications with the threat actor that the threat
19 actor destroyed the server after the data was
20 deleted.

21 Do you see that?

22 A. I do.

23 Q. The Flagstar communications that you're
24 referring to here, those are what we looked at in

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1 **Exhibits 11, 12, and 13, correct?**

2 A. Correct.

3 Q. And earlier when we discussed what you
4 reviewed in preparing the declaration, these
5 communications were not listed, right?

6 A. When I prepared the declaration, that is
7 correct. I did not review those.

8 Q. So if you hadn't reviewed these
9 communications at that time, what was your
10 understanding of the threat actor's intention based
11 upon?

12 MS. LAPE: Objection. The witness
13 previously answered what her declaration was based
14 on.

15 BY MR. BARTHLE:

16 Q. **You can answer.**

17 A. I don't have any information on the threat
18 actor's intention, and I believe that that's what you
19 asked. So what I am aware of is that Tetra Defense
20 worked with the threat actor to have access to the
21 environment and to validate that the data was gone
22 and that they no longer retained our information.

23 Q. **What -- what I'm trying to get at is here**
24 **you're declaring that it's your understanding that**

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1 **the threat actor destroyed the server, and I'm trying**
2 **to figure out how you know that.**

3 A. My knowledge is based on a set of e-mails
4 that are included here and what was communicated to
5 us at the various executive meetings related to the
6 incident.

7 Q. All right. And I think -- this sort of
8 maybe shortcut time. Exhibit 11, if you go to Bates
9 page 17, it seems to be the only place where the
10 threat actor speaks about destroying the server. You
11 can review that. And my question will be, is there
12 anything other than the statements on this e-mail
13 exchange that your understanding about destruction of
14 the server is based?

15 A. It is my understanding and I can confirm
16 that that is my understanding that it was deleted
17 based off of a threat actor's conversation with Tetra
18 Defense. I have to go off of my understanding, and
19 that is what I understood to have occurred. I still
20 believe that my statement is factually accurate.

21 Q. I'm just trying to get at the source of your
22 understanding that it was destroyed, not that it was
23 deleted. I understand the deletion question. That
24 the actual servers were physically destroyed and --

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1 and I think the answer is it's based on these
2 communications with the threat actor, correct?

3 A. Correct.

4 Q. Now, can you show me in here where the
5 threat actor says the server has been destroyed?

6 A. I don't believe that there's anything in
7 here that confirms that it was destroyed, that states
8 that specifically.

9 Q. And -- and Flagstar -- no one at Flagstar
10 viewed destruction of the server, correct?

11 A. I am not aware of anyone viewing that.

12 Q. Or anyone at Tetra?

13 A. I am not aware.

14 Q. Or anybody at Kroll, correct?

15 A. It is my understanding.

16 Q. Okay. Paragraph 8, Exhibit 19, you write,
17 Immediately following the cyber incident, Flagstar
18 engaged Kroll Associates, Inc. to conduct a forensic
19 inspection of the data exfiltrated during the cyber
20 incident. Kroll also conducted daily monitoring of
21 the dark web, including the site associated with the
22 threat actor, and identified no evidence that the
23 threat actor released any Flagstar data from the
24 cyber incident.

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1 **Do you see that?**

2 A. I do.

3 Q. **And did I read it correctly?**

4 A. I believe you did.

5 Q. **Were you involved in the retention of Kroll**
6 **that's related here in paragraph 8?**

7 A. I was not responsible for the relationship
8 with Kroll.

9 Q. **When you say Flag- -- immediately following**
10 **the incident, is that the December 3rd and 4th time**
11 **frame or -- or what is considered immediately**
12 **following?**

13 A. Immediately following to me encompasses the
14 entire incident from start to finish. It was -- you
15 could look at payment of the ransom with the threat
16 actor no longer communicating with us and no longer
17 in our environment as being really the sort of end of
18 the incident. And so Kroll was involved, as I
19 mentioned, our managed detection and response vendor.
20 They were our MDR vendor before the incident. They
21 were our MDR vendor after the incident.

22 So they were involved in being able to
23 perform various security monitoring for us both
24 before as well as after. Specifically they were

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1 looking at, you know, following the incident, looking
2 to see if there was any customer data on the dark
3 web.

4 Q. So Flagstar had a preexisting contractual
5 relationship with Kroll prior to the incident
6 occurring?

7 A. Correct.

8 Q. And that, as you said, was related to MDR.
9 And what does that stand for again?

10 A. Managed detection and response.

11 Q. And this -- this immediate inspection --
12 well, it immediately was retained and did this
13 forensic inspection, correct?

14 A. Correct.

15 Q. And did it also begin dark web monitoring at
16 that time?

17 A. Correct.

18 Q. Do you know, when Flagstar uses Kroll for a
19 particular purpose, does it enter into separate
20 statements of work or contracts for those particular
21 engagements?

22 A. Typically we will have a statement of work.
23 In the event of a, you know, managed service, a
24 managed service, they're engaged throughout and can

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1 perform activities as it comes up. So it may not be
2 specifically called out within a statement of work
3 but is part of the, you know, cyber monitoring that
4 is part of the -- in this case the managed detection
5 and response work that they do for us.

6 MR. BARTHLE: So the next exhibit I'm going
7 to get into is pretty long. It's probably going to
8 take awhile. So I don't know if we want to start
9 that now or do lunch or then just have it all at the
10 end.

11 MS. LAPE: We can break for lunch if -- if
12 that's what you prefer.

13 MR. BARTHLE: Sure.

14 THE VIDEOGRAPHER: We are going off the
15 record at 12:33 p.m.

16 (Whereupon, a break was taken,
17 after which the following
18 proceedings were had:)

19 (Whereupon, Deposition
20 Exhibit No. 22 was marked.)

21 THE VIDEOGRAPHER: We are going back on the
22 record at 1:13 p.m.

23 BY MR. BARTHLE:

24 Q. **Before the break, we were talking about**

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1 **Kroll, correct?**

2 A. I believe that's right.

3 Q. And are you familiar with Flagstar's process
4 for how Kroll is retained and engaged in -- in any of
5 these incidents?

6 MS. LAPE: Objection, vague.

7 BY MR. BARTHLE:

8 Q. **You can answer.**

9 A. At a high level, I'm -- I'm aware of how we
10 engage vendors.

11 Q. I'm going to show you what we'll mark as
12 Exhibit 22. This is a list of -- a compilation of
13 agreements and statements of work that Kroll produced
14 in this case. Are you familiar with all or any of
15 these?

16 A. I have not had an opportunity to go through
17 these to tell you whether or not I'm familiar with
18 all of them.

19 Q. Were you involved -- well, maybe -- do you
20 know whether Kroll was retained in connection with
21 the Accellion related breach?

22 A. They were.

23 Q. Could you could flip to what's Bates page 11
24 at the bottom there?

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1 A. Okay.

2 Q. Do you know whether this letter agreement is
3 what initiated the relationship between Flagstar and
4 Kroll as related to the Accellion breach?

5 MS. LAPE: I object. This is a letter to
6 McDonald Hopkins, which is not Flagstar. It's to
7 legal counsel here. So there's been no indication
8 that --

9 MR. BARTHLE: I'll point out that --

10 MS. LAPE: -- she's aware of this.

11 MR. BARTHLE: -- it's signed by Flagstar at
12 page 15.

13 MS. LAPE: For purposes of payment probably.
14 BY MR. BARTHLE:

15 Q. So, again, my question is, do you know
16 whether this is the letter agreement that started the
17 relationship with Kroll as it relates to the
18 Accellion case?

19 A. I do not know.

20 Q. If you turn to Bates page 16, there's a
21 statement of work. It's also dated January 27th,
22 2021. It purports to be between Kroll, McDonald
23 Hopkins as counsel for Flagstar. Okay. Do you see
24 that?

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1 A. I do.

2 Q. In this -- and the description of services
3 refers to Phase 1, Accellion forensic investigation.
4 Do you see that?

5 A. I do.

6 Q. Was Kroll involved in the forensic
7 investigation related to the Accellion breach?

8 A. They were.

9 Q. Okay. Do you know whether this was the
10 statement of work that set up that relationship?

11 A. This appears to be the SOW, the statement of
12 work, that would have brought them into that review.

13 Q. Okay. And then if you turn over to Bates
14 page 24, have you ever seen this document before?

15 A. I have not.

16 Q. Do you know what Kroll Responder Powered by
17 Red Canary is?

18 MS. LAPE: I'm going to object. Again, this
19 is outside of the scope of her declaration. We've
20 agreed to the scope of this deposition to be -- to be
21 specific to the facts of the declaration.

22 MR. BARTHLE: And the facts of the
23 declaration are that Flagstar engaged Kroll to
24 immediately do dark web monitoring. It's my

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1 understanding, if we follow through these, that dark
2 web monitoring didn't start for Kroll until October
3 of 2022. So I think it's relevant.

4 MS. LAPE: It is absolutely not relevant.

5 This is in March of 2021 --

6 MR. BARTHLE: Exactly.

7 MS. LAPE: -- which is before December of
8 2021, which is before the breach occurred.

9 MR. BARTHLE: I understand that. I need to
10 exclude these statements of work as being relevant to
11 the 2021 -- December 2021 breach. I also need to
12 know whether Red Canary is the MDR that she testified
13 about earlier. And I'll point out that this
14 statement of work specifically excludes the law firm
15 as a party. So there's no privilege issue here.

16 MS. LAPE: There's no privilege issue here,
17 but there's nothing in her declaration that talks
18 about what Kroll was doing in March of 2021, and we
19 have agreed that this deposition is about the
20 contents of her declaration and her declaration only.

21 MR. BARTHLE: I just explained how it's
22 relevant.

23 MS. LAPE: Show me the factual statement in
24 this declaration that a March 2021 engagement

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1 responds to.

2 MR. BARTHLE: I just explained paragraph 8
3 says, Immediately following the cyber incident,
4 Flagstar engaged Kroll to conduct an inspection and
5 to do daily monitoring of the dark web.

6 My understanding of every statement of work
7 and every agreement with Kroll is that doesn't
8 occur -- dark web monitoring doesn't occur as it
9 relates to the December 2021 breach until October of
10 2022.

11 MS. LAPE: Why don't you ask her the
12 question.

13 MR. BARTHLE: I -- I will ask this in the
14 order that I want to ask it. It's my deposition.
15 I'm sorry. You can ask your --

16 MS. LAPE: Okay.

17 MR. BARTHLE: -- questions as you want to
18 ask them.

19 MS. LAPE: We have an agreement on
20 December 5th, 2023, which I can provide to you, in
21 which you agreed that this would be limited to the
22 facts in the declaration. If you determine that you
23 need to exceed the facts in the declaration, then we
24 can stop the deposition and we will move for a

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1 protective order under Rule 30(d).

2 But we had a very limited agreement here.

3 So you can ask her the factual questions. But going
4 through exhibits from 2021, March of 2021, before the
5 breach even occurred is not related to the facts in
6 her deposition.

7 MR. BARTHLE: Okay. Do you agree then that
8 any relationship with Kroll prior to December of 2021
9 had nothing to do with any services that Kroll
10 provided as it relates to this breach?

11 MS. LAPE: No, that is not the -- what I'm
12 saying.

13 MR. BARTHLE: Okay. Then how can I
14 determine whether Kroll had an agreement or provided
15 services relevant to the breach that we're here to
16 discuss if I can't ask what these things were for?

17 MS. LAPE: You can ask her about the facts
18 in her declaration that relate to standing in this
19 case. And in the event you are successful in
20 opposing the motion to dismiss, the witness is
21 required to come back pursuant to Rule 30 and
22 pursuant to our agreement and continue to answer
23 questions in this case. That -- but -- but there's
24 nothing pursuant to our agreement that would allow

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1 you to ask questions about this. This is outside of
2 her declaration facts.

3 BY MR. BARTHLE:

4 Q. You testified about Kroll providing MDR
5 services, correct?

6 A. I did.

7 Q. Is that what Red Canary is?

8 A. That is correct.

9 Q. And those services were being provided by
10 Kroll to Flagstar beginning in March of 2021?

11 A. That is correct.

12 Q. Were those services also being provided in
13 December of 2021?

14 A. That is correct.

15 Q. Is it your understanding that Red Canary
16 involves dark web monitoring?

17 A. I am not fully versed on all of the set of
18 services. But if I were to read what it describes
19 here, there's a number of different elements of the
20 support that they provide, including threat analysis,
21 intelligence advice on new and emerging threats of
22 interest, threat correlation, root cause analysis,
23 periodic threat landscape, detection, review and
24 service, update, teleconferences, malware analysis,

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1 e-mail based customer support for nonemergency
2 requests, and then it looks like there's an ability
3 to get on-demand cybersecurity services.

4 **Q. So -- so, again, do you have any**
5 **understanding whether Kroll provides dark web**
6 **monitoring through this Red Canary service?**

7 A. I am not aware of any specifics to dark web
8 monitoring here.

9 Q. All right. If you turn to Bates 36.

10 A. Okay.

11 Q. Would this have been a statement of work
12 related to the December 2021 cyber incident?

13 A. Yes. From what I can see here, yes.

14 And I just want to remind you that I would
15 not have been the one to enter into these agreements.
16 While I may be aware of some of them, I was not
17 responsible for entering into the agreements because
18 that was part of the information security team's
19 responsibility.

20 Q. And who in info sec would have been the one
21 interacting with Kroll on these documents?

22 A. The CISO.

23 Q. And that was Zah?

24 A. Zah.

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1 Q. Zah.

2 A. Zah.

3 Q. Okay.

4 A. Uh-huh.

5 Q. On this statement of work here on Bates page
6 36 of Exhibit 22, if we look at the description of
7 services, the --

8 A. Yeah.

9 Q. -- fifth bullet, If possible from available
10 forensic evidence, fully enumerate scope of exposure
11 around sensitive data.

12 Do you see that?

13 A. I do.

14 Q. What -- what is that explaining that Kroll
15 was doing?

16 A. Based on whatever logs and so forth that we
17 would have provided, enumerate is basically create a
18 list of basically the data that may have been
19 breached.

20 Q. All right. And that's the analysis that you
21 spoke about earlier that preceded what the Flagstar
22 data analytics people did?

23 A. That is correct. That is correct. So this
24 likely was the line item that helped them review that

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1 data and make sure that they understood what data was
2 exposed.

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3 Q. Now I want you to turn to Bates page 42.

4 And this appears to be an amendment to that statement
5 of work from March 16th of 2022.

6 A. I want to pause on what I just said. So
7 what we just talked about in terms of that bullet,
8 that bullet is not the only bullet that covers their
9 review of data. So if you look at, you know, Phase 2
10 and Phase 3 -- or sorry -- Phase 2b, that's the
11 sensitive data detection. This is where they're
12 actually doing that work to go through, review,
13 identify all of the data. So this SOW does include
14 the work that we talked about. That bullet is not
15 the only bullet that articulates the scope of that
16 work.

17 Q. Okay. I understand. Thank you for that.

18 A. Yeah.

19 Q. Can you turn to page 42?

20 A. Okay.

21 Q. All right. And this is an amendment to that
22 statement of work from March 16th of 2022. Do you
23 see that?

24 A. Yes.

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1 Q. All right. There's a sort -- a fairly
2 similar bullet to the one we just read. I think it's
3 now the sixth. And it says, If possible from
4 available forensic evidence, fully enumerate scope of
5 exposure around sensitive data related to both
6 incidents.

7 Do you see that?

8 A. I do.

9 Q. What is "both incidents" referring to here?

10 A. I would have to speculate. I don't know.

11 Q. All right. And on that -- that same page,
12 if you go to the -- the second bullet from the bottom
13 in Phase 1.

14 A. Uh-huh.

15 Q. It starts with Attempt.

16 A. Yep.

17 Q. Do you see, Attempt to identify if
18 additional sensitive data, PI, PII, PFI, or PHI to
19 include areas of the network where stored were
20 exposed as a result of any identified compromise.

21 Do you see that?

22 A. I do.

23 Q. What is that describing?

24 A. My understanding of this statement as I read

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1 it, the way I would interpret it, is for -- as part
2 of their forensics analysis, to go beyond just the
3 files that were exfiltrated but to look within the
4 entire environment to identify if it was possible
5 that there was any other data that was exposed.

6 Q. Okay. So Flagstar anticipated a scenario in
7 which additional sensitive data might have been
8 exposed during the incident?

9 MS. LAPE: Objection, out of scope and it
10 calls for speculation.

11 THE WITNESS: I -- I was going to have to
12 say I -- I would have to speculate on that. There
13 was no belief that there was additional data exposed.
14 This was a way to validate that no other data was
15 exposed.

16 BY MR. BARTHLE:

17 Q. Okay. If you turn to page -- Bates page 46.
18 Are you familiar with this SOW with Kroll?

19 A. I am not.

20 Q. It appears to be related to data breach
21 notification, identity monitoring services?

22 A. Yes.

23 Q. Is it your understanding that this doesn't
24 have anything to do with the December 2021

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1 investigation, response; it doesn't have -- it's not
2 involved in that aspect of the incident?

3 A. That is correct.

4 Q. All right. So in these statements of work
5 related to this incident, I don't see anything that
6 refers to dark web monitoring. Am I missing
7 something in these December 2021 statements of work
8 that encompass that?

9 A. Let me take a quick look since this is the
10 first time I'm seeing this.

11 Just -- could I have you repeat the question
12 for me so I understand the scope of the question?

13 Q. So in the statements of work related to the
14 December 2021 incident, I don't see anything that
15 refers to dark web monitoring. Am I missing
16 something that encompasses that work?

17 A. I don't specifically see it called out,
18 other than in the bullet on the indent, cyber risk
19 services under managed security where they talk about
20 cyber -- or sorry -- managed detection response, dark
21 web monitoring, cyber threat intelligence. But
22 that's it.

23 Q. All right. If you turn to Bates page 29.

24 A. Okay.

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1 Q. This seems to be another statement of work
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2 that's from October of 2022. Do you see that?

3 A. I do.

4 Q. It refers to the letter of engagement
5 entered into on December 3rd, 2021. Do you see that?

6 A. I do.

7 Q. All right. And this refers to dark web
8 investigation as -- under the Description of
9 Services, correct?

10 A. It does.

11 Q. It's true then, is it not, that Kroll's dark
12 web investigation as it relates to this case didn't
13 start until October of 2022?

14 MS. LAPE: Objection, form.

15 BY MR. BARTHLE:

16 Q. You can answer.

17 A. Oh. I -- from this, it appears that the
18 dark web investigation began on October 14th, 2022.

19 Q. Did you have any role in interfacing with
20 Kroll related to the dark web investigation?

21 A. No, I did not.

22 Q. Who would have at this time in October of
23 2022?

24 A. This would have been run on behalf of

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1 information security.

2 Q. Would it still have been Zah at that time?

3 A. I don't recall when Zah left the
4 organization. I don't -- I just don't recall when
5 she left. So whether it was her or somebody else.
6 When I look at who signed this, Jim Giszczak, who was
7 McDonald Hopkins, and Paul Borja who was legal for
8 Flagstar. So it is not clear to me who other than
9 those individuals would have been involved in signing
10 up for this service.

11 Q. You referenced a -- a Jim from McDonald
12 Hopkins that was the breach coach?

13 A. Yes.

14 Q. Is it this Jim?

15 A. It is that Jim, that's correct.

16 Q. Since you weren't involved in this exchange,
17 I assume you don't know how the outcome of this
18 investigation was reported to Flagstar?

19 A. I don't know the specifics behind it, other
20 than it says here, Provide client counsel with a
21 verbal presentation and summary report upon
22 conclusion of the engagement.

23 Q. Were you involved in that presentation?

24 A. I was not.

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1 **Q.** **Do you know who was?**

2 A. I do not know, but based off of client and
3 counsel, I'm assuming that it would have been our
4 information security and our -- and perhaps legal.

5 **Q.** **Under Description of Services, it refers to**
6 **-- it says, Client will work with Kroll's analyst**
7 **team to set up an initial list of keywords to be**
8 **researched on the dark web.**

9 **Do you see that?**

10 A. Yes, I do.

11 **Q.** **Are you familiar with that keyword process?**

12 A. I am familiar with the process.

13 **Q.** **In this instance?**

14 A. Not necessarily this specific instance. But
15 as I referenced previously in the production of the
16 list of PII data that may have been exfiltrated,
17 giving them information around, this is what an
18 account number looks like at Flagstar. This is what,
19 you know, a loan number looks like at Flagstar.

20 **Q.** **Do you have an understanding of what these**
21 **keywords were that Flagstar provided to Kroll to**
22 **research?**

23 A. I did not see the list.

24 **Q.** **All right. I'm going to direct you back to**

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1 your declaration, paragraph 19 -- Exhibit 19,
2 paragraph 9. You wrote, Due to the size and
3 complexity of the exfiltrated data, including that
4 much of it was unstructured and required an extensive
5 manual review, Kroll's forensic inspection took until
6 June 2nd, 2022, to complete. At that time Flagstar
7 identified and finalized a list of individuals whose
8 personal information was compromised during the cyber
9 incident.

10 Do you see that?

11 A. I see it.

12 Q. Did I read that correctly?

13 A. You did.

14 Q. The forensic inspection that's referred to
15 here in paragraph 9, is that the same inspection
16 that's referenced in paragraph 8?

17 A. Correct.

18 Q. And is this the -- also the same process
19 that you -- you spoke about earlier that was used in
20 creating the -- the lists that we spoke about in
21 Exhibit 20?

22 A. That is correct.

23 Q. And I think your testimony was that the --
24 the lists from Exhibit 20 were created around March

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1 **of 2022; is that right?**

2 A. I don't recall -- I'm going to have -- I
3 would have to go back and look at what I referred to
4 as March. The data was first pulled by Kroll and
5 then sent to our team to do additional analysis on
6 it. But all of that work took until June -- June 2nd
7 to complete before we were able to send letters.

8 **Q. What is unstructured data?**

9 A. Unstructured data basically means something
10 like a document, an e-mail, something that's not in a
11 database. So it's not easily categorized into fields
12 that you can reference. It's kind of a blob.

13 **Q. And the -- the forensic inspection that**
14 **Kroll engaged in was what you spoke about earlier.**
15 **It's trying to figure out what PII elements are in**
16 **this universe of data?**

17 A. Correct.

18 **Q. Do -- do you know that -- well, is it**
19 **accurate to say that that occurred via use of keyword**
20 **searches?**

21 A. There were two ways that they conducted the
22 work, and that was shown in that SOW as well. There
23 were automated ways of finding data and then there
24 were manual ways of finding data. So in some cases,

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1 it was a computer program that was able to scan a
2 document, for example, to look for a field. And in
3 other cases, a human had to look at a document to
4 determine and derive whether or not there was PII
5 data in it.

6 **Q. Did you oversee any of Kroll's work in this
7 inspection?**

8 **A. I did not.**

9 **Q. That would have been someone from
10 information security or who would have been doing
11 that?**

12 **A. That's correct. Information security is --
13 along with our partners at Kroll. Kroll was -- well,
14 I guess we would have been overseeing Kroll, but
15 Kroll was also in some cases -- you know, they were
16 doing the work. So they were overseeing their
17 resources who were doing the work to actually find
18 the data.**

19 **Q. In the -- I guess the deliverable from this
20 inspection was what?**

21 **A. The deliverable would have been a list of
22 individuals with whatever data elements were
23 potentially exfiltrated.**

24 **Q. And was that in like a database or a**

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1 spreadsheet, or what was that?

2 A. It was -- my understanding is it came to us
3 in a spreadsheet.

4 Q. Have you ever seen that original
5 deliverable?

6 A. I did not see the original deliverable
7 coming from Kroll.

8 Q. That is the deliverable that went to the
9 data analytics team?

10 A. That is correct.

11 Q. And then they used that to create the lists
12 that we talked about in Exhibit 20, correct?

13 A. That is correct.

14 Q. All right. In paragraph 9, it says, second
15 sentence, At that time Flagstar identified and
16 finalized a list of individuals whose personal
17 information was compromised during the cyber
18 incident.

19 Do you see that?

20 A. I do.

21 Q. And is that what ultimately was excerpted in
22 Exhibit 20?

23 MS. LAPE: Objection.

24 THE WITNESS: This --

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1 MS. LAPE: You can answer.

2 THE WITNESS: This document is an excerpt of
3 the overall set of document that -- or set of data
4 that was prepared for Flagstar.

5 BY MR. BARTHLE:

6 Q. Well, let me ask a simple question. It says
7 Flagstar identified and finalized a list of
8 individuals, right?

9 A. That is correct.

10 Q. How did that happen?

11 A. Based on the data that we received from
12 Kroll, we went back to our database and we pulled as
13 much of the, you know, contact information we could
14 from that data warehouse.

15 Q. Okay. And that's -- the folks who would
16 have been dealing with that, that was Kamala and
17 Jeremy and Greg Hubble, right?

18 A. Correct.

19 Q. You were not personally involved in
20 preparing that list, correct?

21 A. That is correct.

22 Q. Okay. Paragraph 10. I have reviewed that
23 list and can confirm the following.

24 Do you see that?

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1 A. I do.

2 Q. Can you explain what you did here to prepare
3 this paragraph?

4 A. To be clear, I did not prepare the
5 paragraph. But I reviewed the paragraph based off of
6 the names that were on here and looking against the
7 master list of customer records.

8 Q. So you looked at the list that we see an
9 excerpt from in paragraph 20, correct?

10 A. Correct.

11 Q. And that was prepared by the data analytics
12 folks?

13 A. Correct.

14 Q. And they prepared that by using the
15 information from Kroll, right?

16 A. Correct.

17 Q. And then here, you're just listing
18 essentially what Exhibit 20 shows; is that right?

19 A. I'm not listing what Exhibit 20 shows. It
20 is -- this had specific information that was not
21 exfiltrated in this first case. So this -- it would
22 not show on Exhibit 20.

23 Q. Okay. So, for instance, as to paragraph
24 10(a) here, you wrote, John Scott Smith's personal

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1 and business bank account information was not
2 exfiltrated during the cyber incident. Is that read
3 correctly?

4 A. That is read correctly.

5 Q. Okay. So you would have gone and looked at
6 the list from Exhibit 20 and confirmed that those
7 data elements are not present in the column for
8 exposed elements for Mr. Smith; is that right?

9 A. That is correct.

10 Q. So is -- is paragraph 10, you're just
11 comparing what's in Exhibit 20 and making statements
12 about what is or is not there, correct?

13 A. Correct.

14 Q. In the original spreadsheet that Exhibit 20
15 was derived from, does it list everybody who Flagstar
16 or Kroll determined was impacted in the cyber
17 incident?

18 A. It does.

19 Q. And it lists all fields of data for each
20 individual that was potentially impacted in the
21 incident?

22 A. It does.

23 I just want to make sure I'm -- I'm clear on
24 that. It did not list every piece of data. It

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1 listed every piece of PII type data. So if, for
2 example, there was -- I'm trying to think about, you
3 know, maybe a check image or something like that. If
4 their signature was on there, we would not have
5 identified that the signature was in this list
6 because the signature not being a piece of PII data.

7 **Q. And -- and what's the definition that you're**
8 **using here for -- for things that are -- are PII**
9 **data?**

10 A. So we consider personally identifiable
11 information, PII, which generally can include --
12 there's a number of different elements. I don't have
13 them all memorized. But it will usually include
14 name, something that identifies that individual, and
15 some sort of relevant sensitive information such as a
16 Social Security number, perhaps a telephone number,
17 an address, a bank account number. A bank account
18 number by itself is not PII. A bank account number
19 with an individual is considered PII.

20 **Q. All right. Paragraph 11 of your**
21 **declaration, Exhibit 19, in January 2021, Accellion,**
22 **Inc., a vendor that Flagstar used for its secure file**
23 **sharing platform informed Flagstar that the platform**
24 **had a vulnerability that was exploited by an**

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1 unauthorized party. Flagstar permanently
2 discontinued use of the file sharing platform but
3 subsequently learned that the unauthorized party was
4 able to access some of Flagstar's data on the
5 Accellion platform, including customer personal
6 information, the Accellion incident. It is my
7 understanding that the data compromised during the
8 Accellion incident was made available on the dark
9 web.

10 Did I read that correctly?

11 A. You did.

12 Q. What was your involvement in the Accellion
13 incident?

14 A. Much like this -- the incident that we've
15 been focused on, I was the CIO at the time. So my
16 role was both in terms of patching the system,
17 upgrading the system. I did participate in the
18 executive meetings that we had relative to the
19 incident itself and provided my, I guess, view of the
20 technical environment and operations of that
21 technical environment.

22 Q. Did you have any personal involvement in
23 determining whether Flagstar data from the Accellion
24 incident was made available on the dark web?

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1 A. Can you repeat that?

2 Q. Did you have any personal involvement in
3 determining that Flagstar data was made available on
4 the dark web from the Accellion incident?

5 A. I did not personally go out to the dark web
6 to find that data. I was made aware that the data
7 was there.

8 Q. And that's my next question. How did you
9 become aware of that understanding?

10 A. The information security team, along with
11 the forensics provider that we used, went to -- and
12 there -- there was a portal where the data was made
13 available.

14 Q. Was the forensic provider in that case also
15 Kroll?

16 A. Yes.

17 Q. Do you know what the information security
18 team or Kroll did to determine that this information
19 was available on the dark web?

20 A. They did go out to the portal that the
21 threat actor provided and looked at the data.

22 Q. Do you know who -- individuals who did that?

23 A. I do not know.

24 Q. Do you know how it was determined that that

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1 information derived from the Accellion incident
2 versus something else?

3 A. Yes.

4 Q. And how was that done?

5 A. There was -- just like with the second, we
6 had logs where there was an indication of what data
7 was taken and we could match that data from that log
8 against the portal that was provided by the threat
9 actor.

10 Q. All right. Paragraph 12 of your
11 declaration, Exhibit 19, I have reviewed the list of
12 individuals impacted during the Accellion incident
13 and can confirm that the following plaintiffs have
14 personal information compromised in the Accellion
15 incident: John Scott Smith, Christopher P. Kennedy,
16 Mark Wiedder, Rafael Hernandez, Hassan Nasrallah,
17 Nathan Silva, and Everett Turner.

18 Do you see that?

19 A. I do.

20 Q. Did I read that correctly?

21 A. You did. I cannot guarantee you pronounced
22 all the names correctly, but yes.

23 Q. This list of individuals impacted during the
24 Accellion incident, where did that come from?

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1 A. So the list of individuals was contained in
2 the master list that we had regarding all of the --
3 the breached customers and data from the Accellion
4 incident.

5 Q. **And were you involved in the creation of**
6 **that list?**

7 A. I was not.

8 Q. **Would Kroll have been the one responsible**
9 **for creating that list as well?**

10 A. This followed the same process that we used
11 before. Kroll produced an initial list. And then
12 the same individuals that were involved in the second
13 incident were the same individuals who created the
14 list so that we could find contact information to
15 notify those individuals.

16 Q. **And, again, like with the incident we're**
17 **here about, you weren't involved in overseeing**
18 **Kroll's analysis, correct?**

19 A. That is correct.

20 Q. **And you weren't involved in confirming its**
21 **accuracy, right?**

22 A. I was not responsible for overseeing Kroll.

23 Q. **Does that list from the Accellion incident,**
24 **does that still exist today?**

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1 A. Yes.

2 Q. And was it in a similar deliverable format
3 as Flagstar received it related to the December 2021
4 incident?

5 A. Yes.

6 Q. And the -- the list of individuals impacted
7 in Accellion that you referred to in paragraph 12, is
8 it -- my understanding correct that that excerpt is
9 the second page of Exhibit 20?

10 A. Yes.

11 MR. BARTHLE: I think I'm probably done, but
12 I'd like to just circle up with Jordan for five
13 minutes and...

14 THE WITNESS: Okay.

15 THE VIDEOGRAPHER: We are going off the
16 record at 1:57 p.m.

17 (Whereupon, a break was taken,
18 after which the following
19 proceedings were had:)

20 THE VIDEOGRAPHER: We are going back on the
21 record at 2:13 p.m.

22 MR. BARTHLE: Ms. Charters, thank you for
23 your time. I have no further questions.

24 MS. LAPE: I have no questions.

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1 THE COURT REPORTER: Signature.

2 MS. LAPE: Yes, please.

3 THE COURT REPORTER: Do you want a rough
4 draft?

5 MS. SIELING: Yes.

6 MS. LAPE: Do we have a standing order or
7 no?

8 MS. SIELING: No.

9 THE VIDEOGRAPHER: Does anybody want to get
10 the video order? Can I get that on the record?

11 MR. BARTHLE: Whatever our standing thing
12 with Huseby is, we'll just do that.

13 THE VIDEOGRAPHER: Okay.

14 MS. SIELING: We'll take the video.

15 THE VIDEOGRAPHER: Video?

16 MS. SIELING: Yeah.

17 THE VIDEOGRAPHER: Okay. We are going off
18 the record at 2:13 p.m.

19 THE COURT REPORTER: Do you want a rough?

20 MR. BARTHLE: No.

21 THE COURT REPORTER: What about delivery?

22 MS. SIELING: We're fine with normal
23 delivery.

24 THE COURT REPORTER: The same?

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1 MR. BARTHLE: Whatever we got. I think we
2 get the full Monte from...

3 (Witness excused at 2:14 p.m.)

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1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN

3 IN RE:

4 FLAGSTAR DECEMBER 2021 DATA) Case No.
5 SECURITY INCIDENT LITIGATION,) 4:22-cv-11385
6 _____
7

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of Pages 1 to 104, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, and includes changes, if any, so made by me.

14

15 JENNIFER CHARTERS

16 SUBSCRIBED AND SWORN TO

17 Before me this day

18 of , A.D. 2024.

19 Notary Public

20

21

22

23

24

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4

5

6 I, Michelle A. Duzan, CSR No. 084-004270, a
7 Notary Public within and for the County of Cook,
8 State of Illinois, and a Certified Shorthand Reporter
9 of said state, do hereby certify:

10 That previous to the commencement of the
11 examination of the witness, the witness was duly
12 sworn to testify the whole truth concerning the
13 matters herein;

14 That the foregoing deposition transcript was
15 reported stenographically by me, was thereafter
16 reduced to typewriting under my personal direction
17 and constitutes a true record of the testimony given
18 and the proceedings had;

19 That the said deposition was taken before me
20 at the time and place specified;

21 That I am not a relative or employee or
22 attorney or counsel, nor a relative or employee of
23 such attorney or counsel for any of the parties
24 hereto, nor interested directly or indirectly in the

IN RE: FLAGSTAR DECEMBER 2021 DATA SECURITY INCIDENT LITIGATION
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1 outcome of this action.

2 IN WITNESS WHEREOF, I do hereunto set my
3 hand and affix my seal of office at Orland Park,
4 Illinois, this 9th day of January, 2024.

5

6 *Michelle Duzan*
7

8

9 Notary Public, Cook County, Illinois.

10 My commission expires 11/01/27.

11 Michelle A. Duzan, CSR, RMR

12 CSR No. 084-004270

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1 CHANGES AND SIGNATURE

2 WITNESS NAME: Jennifer Charters, 01/09/2024

3 PAGE LINE CHANGE REASON

4 _____

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19 _____

20 I, Jennifer Charters, have read the foregoing
21 transcript and hereby affix my signature that same is
22 true and correct, except as noted above.

23 _____

24 _____

25 Jennifer Charters